

STATE OF MICHIGAN
COURT OF APPEALS

C & C EQUIPMENT COMPANY, d/b/a
PROFESSIONAL LEASING SERVICE, INC.,

UNPUBLISHED
February 15, 2007

Plaintiff-Appellee,

v

KINNIE ANNEX TRUCK RENTAL, INC., and
WILLIAM KINNIE,

No. 265079
Macomb Circuit Court
LC No. 2002-004957-CK

Defendants/Third-Party Plaintiffs,

and

AMERICAN FUNDING GROUP, INC., and
WILLIAM GRUITS,

Defendants/Third-Party Plaintiffs-
Appellants,

and

CACTUS CARTAGE, LLC,

Third-Party Defendant.

Before: Kelly, P.J., and Davis and Servitto, JJ.

PER CURIAM.

Defendants American Funding Group, Inc. (“AFG”) and William Gruits, AFG’s owner, appeal as of right the trial court’s order finding them personally liable on lease agreements made with Drummy Leasing Company, plaintiff’s predecessor in interest, and awarding plaintiff \$642,162.34 in damages. We affirm.

Defendants first argue that the trial court erred in ruling that the document Gruits executed was a personal guarantee contract. We disagree.

We review de novo as a question of law the proper interpretation of a contract, including a trial court’s determination whether contract language is ambiguous. *Klapp v United Ins Group*

Agency, Inc., 468 Mich 459, 463; 663 NW2d 447 (2003). A trial court's findings of fact at a bench trial are reviewed for clear error. *Meyer & Anna Prentis Family Foundation, Inc v Barbara Ann Karmanos Cancer Institute*, 266 Mich App 39, 59; 698 NW2d 900 (2005). The goal of contract interpretation is to determine the intent of the parties; unambiguous language "is reflective of the parties' intent as a matter of law" and will be enforced as it is written unless doing so would violate public policy. *Quality Products & Concepts Co v Nagel Precision, Inc.*, 469 Mich 362, 375; 666 NW2d 251 (2003).

The document signed by Gruits is titled "GUARANTEE OF LEASE," it identifies Gruits as a "Guarantor," and it provides, in pertinent part:

IN CONSIDERATION of the making of the above lease by the Lessor, Drummy Leasing, Inc., with American Funding Group, Inc., . . . the undersigned . . . as a direct and primary obligation, guarantees, to the Lessor and any assignee of Lessor (either of whom are hereafter called "Holder") the prompt payment al [sic] all rent to be paid by the Lessee and the performance by the Lessee of all terms, conditions, covenants, and agreements of the Lease.

The document further provides that "the holder may . . . proceed directly against the undersigned without first proceeding against Lessee" and that "Accounts settled or stated between the holder and Lessee shall bind the undersigned." We agree with the trial court that the guarantee contract is clear and unambiguous, and it demonstrates Gruits' intent to personally guarantee AFG's payments and lease obligations under its lease with Drummy Leasing.

Defendants argue that the addition of the word "President" after Gruits' signature renders the contract ambiguous. We disagree. The document repeatedly refers to the undersigned and the lessee as separate persons, compelling the conclusion that Gruits signed in his individual capacity and not merely as a representative of AFG. The word "president" appears to be no more than *descriptio personae*. See *Ricker v B-W Acceptance Corp.*, 349 F2d 892, 894 (CA 10, 1965) (observing that an agent can be personally liable on a guarantee contract with another, and if the contract indicates a personal obligation, the addition of a title will be considered "mere 'descriptio personae'"). Indeed, a corporate guarantee would have been meaningless, given that AFG was already bound as principal. See *Kelso Oil Co, Inc v East West Truck Stop, Inc.*, 102 SW3d 655, 659 (Tenn App, 2003); *PNC Capital Recovery*, *supra* at 270-271; *Smith v Haywood Oil Co, Inc.*, 199 Ga App 562; 405 SE2d 560 (1991); *United S&L Ass'n v Lake of the Ozarks Water Festival, Inc.*, 805 SW2d 350, 356 (Mo App, 1991). Although a court may reform a contract to reflect the parties' actual intent where the evidence clearly shows a meeting of the minds that was not properly expressed in the instrument, *Mate v Wolverine Mut Ins Co*, 233 Mich App 14, 24; 592 NW2d 379 (1998), the trial court here properly enforced the contract as written, in accordance with its clear and unambiguous terms.

Defendants finally argue that the guarantee contract is unenforceable due to lack of consideration. We disagree. Consideration is required for a valid contract. *Meyer & Anna Prentis Family Foundation, Inc, supra* at 58. Consideration is a bargained for exchange involving a benefit on one side or a detriment suffered, or service done, on the other. *Id.* With respect to guarantees, mutual undertakings of the principal parties to a contract furnish sufficient consideration for the promise of a guarantor. *W T Rawleigh Co v Trerice*, 224 Mich 420, 428; 195 NW 79 (1923). Here, AFG agreed to make lease payments to Drummy Leasing in exchange

for Drummy Leasing paying off its \$597,000 debt to GE Capital and furnishing \$101,000 to the company. These mutual undertakings by the parties furnished sufficient consideration for Gruits' guarantee. *W T Rawleigh Co, supra*. Moreover, the guarantee expressly indicates that the consideration for Gruits's guarantee is the transaction between his company, AFG, and Drummy Leasing. Therefore, the trial court did not err in finding that there was sufficient consideration for Gruits's guarantee.

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Alton T. Davis

/s/ Deborah A. Servitto